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15. — *La Trustis et l'Antrustion royal sous les deux premières races*. Par MAXIMIN DELOCHE, Membre de l'Institut (Académie des Inscriptions et belles-lettres). Imprimerie nationale. Paris. 1873.

THE historians of that period in the history of Western Europe during which the destinies of the countries afterwards called Germany and France were united, have offered different explanations in regard to the *trustis* of the Merovingian and Carolingian laws and documents. Without entering in detail into the opinions of Montesquieu, Guizot, Naudet, Guérard in France, and of Eichhorn, Grimm, Waitz, Roth, etc., in Germany, it is enough to recall the fact that the word *trustis* has been successively translated by "fidelity," "obedience," "consolation," "alliance," "military corps," "guard (of the king)," "friendship," "royal protection," and, finally, "escort (Gefolge)." These interpretations have naturally given birth to a series of systems in regard to the *institution* of the *trustis*, which M. Deloche, familiar with modern historical literature, examines in succession; an examination which is much too long for a scientific monograph, and encumbers the work by a mass of known or useless details. Each of these systems is commonly distinguished from the others by only a slight shade of difference, since the larger number of historians agree in seeing on one hand in the institution of the *trustis* a result of the ancient *comitatus* described in the *Germania* of Tacitus, and in connecting, on the other, with this assumed institution the vassalage of Carolingian times. On this point of capital importance, M. Deloche subscribes to the common opinion as is indicated at the conclusion of his work (p. 269): "Le vasselage des temps carolingiens se place comme une transition entre le *comitatus* Germanique, continué par la *trustis* des Mérovingiens, et la féodalité terrienne, dont la fin du X<sup>e</sup> siècle devait voir le triomphe," etc. Yet it seems as though one might have expected a different, if not an absolutely new, result from the author's own words: "C'est en voulant attacher au mot *trustis* une signification unique que les commentateurs ont rencontré des difficultés insurmontables" (p. viii., Préf.). The word has had "non pas à des dates successives, mais dans le même temps des significations différentes suivant l'acte où il est continu et le mode d'emploi dont il est l'objet." What these different significations are, is the point which M. Deloche proposes to establish in the first part of his book (pp. 1–48), where the Merovingian and Carolingian texts, in which the word *trustis* is found, are presented, divided in three groups A, B, C, to each of which a particular meaning of the

word *trustis* responds. The group A furnishes the meaning of "assistance"; the group B, that of "one who has promised assistance to the king"; finally, the group C, that of "category of persons spread over the surface of the kingdom, and connected with the sovereign by the oath of the antrustion." It is obvious that these meanings all spring from the fundamental sense of assistance (promised by oath), and all in the end lead back to it; this is conceded by the author himself: "Ces modes d'emplois différents d'un même terme ont un lien commun très facile à apercevoir, l'idée de *l'assistance armée* et du dévouement personnel promis au roi" (p. 48). One may, however, grant the sense of assistance, on the authority of a single text, without on that account being authorized to admit with the author the existence of a social condition peculiar to persons *in truste regis*, that is to say, the existence of an *institution* called *trustis*. Supported by these interpretations, the second part of the book undertakes to solve the different questions raised in connection with the *antrustionate*; how and when it originated; what the condition of the antrustion was; when and under what influences the institution came to an end; what relations exist between vassalage and the antrustionate; all which is without foundation and falls to pieces at once of its own accord, inasmuch as, according to our reasoning, the antrustionate has no existence at all, if by this term is meant an *institution*, organized and destined to regulate the condition of a certain category of persons, in Merovingian society.

First of all, one cannot but be struck by the fact that the language of the time contains no term which corresponds to the word *antrustionate*; as a matter of fact, this word has been invented by modern historians, and answers to no real idea. Tacitus had *comitatus* to express military companionship; the Carlovingian sources have *vassalaticum*, *vassaticum*, etc., to designate the institution of vassalage; because under each of these denominations there exists a reality. But if we examine closely the texts quoted by M. Deloche, we shall find that in all, except perhaps in one which would give the sense of assistance, *trustis* offers the concrete sense of troop, corps, suite, and never the abstract sense of category or condition of persons; in one word, not a trace of the pretended institution of the antrustionate.

In the first place, the idea of troop, with its varieties of band, suite, attendants, is sharply brought out in the group B, which includes the oldest sources. In the Salic and Ripuarian laws, *truste* or *druete*, the malberg gloss of the Latin word *contubernium*, whose meaning of band, troop, is beyond doubt, indicates the body of friends or neighbors who make search with the individual who has been

robbed, in order to discover both the lost property and the thief; or who accompany the bride and conduct her with ceremony to the husband in order to secure to the marriage that solemn and public character which it was expected to have. In a narrower sense, *trustis* (more commonly *regalis*, *regis*) indicates the assemblage of persons who stand towards the king in a relation of fact that we shall presently see; *antrustio* designates the individual who makes a part of this following.

In the second place, in the second document of the group A, the Capitulary of the year 779, there is no question of "taking the oath of assistance." The title of this chapter bears simply the words: *de trustee faciendo nemo præsumat*; a comparison with the Cap. Kar. of 789 shows that this passage concerns the prohibition to raise bands for purposes of theft and pillage. The addition: *ad nos venienti*, rightly omitted by Pertz in the edition of the Monumenta, has no relation with the beginning of the chapter. This is another provision which some ignorant or careless copyist has joined on to the first, without perceiving that the two provisions have no connection. The words, *ad nos*, etc., are only found in manuscripts of inferior quality.

Finally, the texts of the group C continue to reproduce for the word *trustis* the meaning of troop, or following, without indicating the existence of an institution any more than is done by the texts already quoted. M. Deloche has committed a series of errors in his explanation of these texts, notably in his translation and commentary on cap. 8 of the Decree of Chlothar II.: *Ut in trustee electi*, etc. He translates as follows (p. 11): "*Nous avons décidé que pour statuer sur les affaires intéressant le fisc et tous habitants quelconques (?) il sera établi des centeniers élus dans la trustis, par la fidélité et la sollicitude desquels la paix sera observée.*" The obscurity often found in the terms employed by the Merovingian chancery frequently justifies a certain latitude of translation, but this latitude cannot possibly extend to a translation of: *de fiscalibus — domibus*, by: "*pour statuer sur les affaires intéressant le fisc,*" etc. Moreover it is not easy with this explanation to reconcile the first part of cap. 8, which would confer on the *centenarii* a judicial power, with the end of this same chapter, which would confer on these same *centenarii* simple functions of police. Further, it is well known that according to the judicial organization of the Frankish epoch, suits which concerned the *fisc* were either brought, by virtue of a special mandate from the royal chancery, before the ordinary tribunals in which the count presided, or more often were judged in the royal courts. Passing over various errors of detail, the

mistakes in the author's commentary will appear still more striking if we turn (p. 42 ff.) to the sense attributed to the word *trustis* in the following paragraph : "Ce mot désigne une catégorie d'habitants de la centaine que le législateur a voulu distinguer des autres parceque leur condition était plus haute et que, à raison du lien spécial qui les unissait au souverain, ils présentaient une garantie plus grande pour le maintien de la paix publique." The conclusion is that these persons are antrustions established in each hundred, who, conjointly with the centenarius elected among them, have special rights and obligations, justified moreover by their peculiar social rank. As this argument has no foundation, it results in absolute confusion. The author has no sufficient acquaintance with the Frankish constitution and its judicial organization ; he cannot even have read Prof. Sohm's admirable work on the Frankish Reichs-und-Gerichtsverfassung, or he must have found there (p. 182 ff.) the lucid explanation of paragraph 8 of Decret. Chlothar., which should be read in connection with what has been said above.

The institution of the little troop of neighbors who accompanied the party whose property was stolen, and assisted him in its recovery and in the prosecution of the thief, might answer so long as the Salian Franks remained in the condition of a tribe. But when they had established themselves in Gaul and had founded a kingdom, their political constitution had to be greatly modified ; henceforth there existed an authority, the king and his officials. The individual lost in liberty what he gained in security, and, to mention only the institution now in question, the public peace, which under the *régime* of the old Salic law had been secured by the co-operation of the entire body of free men was now maintained by a police organization created for that object. It is to one of these bodies of police that the § 1, Decret. Chlothar. refers ; the *vigiliæ*, that is to say the *ad vactas nocturnas constituti*, the persons constituted to watch of nights ; and the passage provides that inasmuch as the watch, being in collusion with the thieves, do not pursue them, another organization shall be created (*centenas fierent*). The difficulty rose from the fact that the first police agents were not free men, but persons of inferior condition, half-slaves (*pueri, milites, lictores*, etc.), who failed to do their duty, either by acting in collusion with the robbers, as the paragraph cited expressly says, or owing to the fact that their inferiority of condition prevented them from prosecuting so severely as was needed the free men who were guilty of criminal offences. According to the terms of §§ 7, 8, Decret. Chlothar., this corps of inferior agents is to be replaced by corps composed of free men from whom there would be no reason to

fear collusion with robbers. It is now easy to understand the true sense of the paragraph quoted. The title runs: *Ut in truste electi centenarii ponantur*; that is, concerning the composition of police corps in each hundred. Then the law itself: "For the maintenance of the public safety we ordain that in the circumscription of each hundred, whether on the property of the fisc or on ordinary property, shall be chosen members forming the corps of police (*trustis*) whose fidelity and vigilance shall assure the maintenance of the said safety." The law decrees that the free persons composing this body of police shall be chosen *de fiscalibus et omnium domibus*; over the whole extent of the hundred, as well on the domains of the fisc as on the common domains. The immunity, therefore, in other respects enjoyed by the domains of the fisc, is not to be a cause of exemption from this service of public order.

As appears from these different texts, *trustis* does not designate an organized institution, a category of persons belonging to a higher legal condition. M. Deloche has with justice called attention to the fact that persons *in truste regis* did not enjoy the privileges attributed to them by Montesquieu, Guérard, and Pardessus; he might have pushed his investigations further. He might have proved that the triple *wergeld* of these persons is explained by the same reason as the triple *wergeld* of the *graphio*, of the *sacebaro*, of the *legadarius* (ambassador), of the *missus* (*quando in missaticum directus fuerit*), and certainly no one imagines that the *graphio*, etc., were persons of any particularly permanent legal condition.

In conclusion, although this work appears to us to support an untenable thesis, yet if one takes into account the obscurity which still surrounds a great number of points in the Germanic laws and institutions, as well as the great difficulties which the sources of that historical period offer to the investigator, one is bound to concede to the book a certain scientific value, and to acknowledge in the author a wide acquaintance with the ancient historical literature, both French and German, although he is less familiar with the more recent German works.